

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

JIMMY LEE MEDINA,

Plaintiff,

vs.

MR. ARRON GRAHAM, MR. JIM
SALMONSEN, MR. THOMAS WILSON,
MRS. CARRIE WALSTEAD, and MRS.
CHRISTINE SLAUGHTER,

Defendants.

CV 19-00044-H-BMM-JTJ

FINDINGS AND RECOMMENDATIONS
OF UNITED STATES MAGISTRATE
JUDGE

On October 9, 2019, mail transmitted to Plaintiff Jimmy Medina was returned as undeliverable with an indication that Mr. Medina had been paroled.

(Doc. 11.) The Local Rules for the District of Montana provide:

- (b) Dismissal Due to Failure to Notify. The court may dismiss a complaint without prejudice or strike an answer when:
 - (1) a document directed to the attorney or self-represented party by the court has been returned to the court as not deliverable; and
 - (2) the court fails to receive within 60 days of this return a written communication from the attorney or self-represented party indicating a current address for service.

L.R. 5.3(b).

Mr. Medina was advised in the Court's July 2, 2019 Notice of Case Opening (Doc. 3 at 2) and the Court's Order dated July 24, 2019 (Doc. 4 at 5) that he must immediately inform the Clerk of Court of any change in his address and a failure to

do so could result in dismissal of his case.

It has been more than 60 days since the return of written communication from the Court addressed to Mr. Medina's address of record and Mr. Medina has not filed a notice of change of address.

ACCORDINGLY, IT IS HEREBY RECOMMENDED that this action should be DISMISSED WITHOUT PREJUDICE for failure to comply with Local Rule 5.3.

The Clerk of Court is directed to serve a copy of these Recommendations upon Mr. Medina at his address of record and at Butte Probation and Parole, the address given on the Department of Corrections website.

**NOTICE OF RIGHT TO OBJECT TO FINDINGS &
RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO
OBJECT**

Mr. Medina may file objections to these Findings and Recommendations within fourteen (14) days after service (mailing) thereof.¹ 28 U.S.C. § 636. Failure to timely file written objections may bar a de novo determination by the district judge and/or waive the right to appeal.

¹Rule 6(d) of the Federal Rules of Civil Procedure provides that “[w]hen a party may or must act within a specified time after being served and service is made under Rule 5(b)(2)(C) (mail) . . . 3 days are added after the period would otherwise expire under Rule 6(a).” Therefore, since Mr. Medina is being served by mail, he is entitled an additional three (3) days after the period would otherwise expire.

This order is not immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Fed.R.App.P. 4(a), should not be filed until entry of the District Court's final judgment.

DATED this 13th day of December, 2019.

/s/ John Johnston
John Johnston
United States Magistrate Judge